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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF WASHINGTON

9 GLOVER DORADO SALAZAR, JULIO
10 H. BOYAN AYALA, PEDRO PENA
11 BANEGAS, and MARCELO NOGALES
12 GARCIA

13 Plaintiffs,

14 vs.

15 5 STAR FORESTRY L.L.C., MICHAEL
16 DOMINGUEZ and LISA DOMINGUEZ,
17 husband and wife

18 Defendants.

No. CV-10-00145-LRS

FIRST AMENDED COMPLAINT FOR
DAMAGES AND DECLARATORY
RELIEF

JURY TRIAL DEMANDED

19 **I. INTRODUCTION**

20 1. Plaintiffs are four migrant workers from Bolivia who were
21 admitted to the United States as temporary foreign workers under the H-2B
22 program in 2008. Plaintiffs bring this action for damages and declaratory
23 relief based on the Defendant labor contractors' violations of the Plaintiffs'

24 COMPLAINT FOR DAMAGES AND
DECLARATORY RELIEF - 1

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1 rights under the Migrant and Seasonal Agricultural Worker Protection Act,
2 29 U.S.C. §§ 1801 et seq. (“AWPA”), the Washington Farm Labor
3 Contractor Act, RCW 19.30.010 et seq. (“FLCA”), and the Fair Labor
4 Standards Act, 29 U.S.C. §§ 201 et seq. (“FLSA”).

5
6 2. The Plaintiffs were hired to plant trees during 2008 and 2009
7 for 5 Star Forestry, a forestry company that operates in Washington, Idaho,
8 Mississippi, Montana and Louisiana. 5 Star Forestry and its agents recruited
9 the Plaintiffs in Alabama, luring them to Mississippi with false promises to
10 extend their temporary work visas and to pay high wages. 5 Star Forestry
11 further violated the Plaintiffs’ rights by:

- 12 • failing to disclose payroll information to the workers
13 such as the purpose of sums deducted from the Plaintiffs’ paychecks;
- 14 • utilizing an uncertified farm labor contractor;
- 15 • failing to post terms and conditions of the Plaintiffs’
16 housing;
- 17 • failing to pay the workers overtime wages earned.

18
19 These actions by 5 Star Forestry were in direct violation of its
20 obligations under federal employment laws and a violation of the work
21 agreement which 5 Star Forestry had made with the Plaintiffs.
22

23 **II. JURISDICTION AND PARTIES**

24 COMPLAINT FOR DAMAGES AND
DECLARATORY RELIEF - 2

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1 3. This court has jurisdiction of this action pursuant to 8 U.S.C. §
2 1331 (Federal Question), 28 U.S.C. § 1337 (Interstate Commerce), 29
3 U.S.C. § 1854 (AWPA), and 29 U.S.C. § 216(b) (FLSA).

4 4. The Court is empowered to issue a declaratory judgment
5 pursuant to 28 U.S.C. §§ 2201 and 2202.

6 5. The Court has jurisdiction over plaintiffs' state law claims
7 pursuant to 28 U.S.C. § 1367(a), because those claims are part of the same
8 case or controversy.

9 6. Plaintiffs Glover Dorado Salazar, Julio H. Boyan Ayala, Pedro
10 Pena Banegas, and Marcelo Nogales Garcia are citizens of Bolivia, currently
11 residing in the state of Alabama.

12 7. Defendant 5 Star Forestry is a limited liability company, having
13 its principal place of business in Kooskia, Idaho, that is licensed to do and
14 does business in the State of Washington and has continuously had at least 8
15 employees.

16 8. Defendant 5 Star Forestry is a farm labor contractor licensed in the
17 State of Washington. To insure compliance with the provisions of the
18 FLCA, 5Star Forestry has provided security to the Washington State
19 Department of Labor and Industries in the form of an assigned account held
20 at Kamiah Community Credit Union in the amount of \$10,000.

1 9. At all relevant times, Defendant Michael and Lisa Dominguez
2 have constituted a marital community. All acts alleged to have been done by
3 either Defendant were done on behalf of the marital community.

4 10. At all relevant times, Defendant Michael Dominguez
5 (“Defendant Dominguez”) operated and/or managed Defendant 5 Star
6 Forestry.

7
8 **III. STATEMENT OF FACTS**

9 11. At all times relevant to this action, Plaintiffs were “migrant
10 agricultural workers” within the meaning of 29 U.S.C. § 1802 (8) (A).

11 12. At all times relevant to this action, Defendant 5 Star Forestry
12 was a “farm labor contractor” within the meaning of 29 U.S.C. § 1802 (7)
13 and RCW 19.30.010 (2).

14 13. At all times relevant to this action, Defendant Dominguez
15 owned, managed and operated Defendant 5 Star Forestry, and as such was a
16 farm labor contractor for purposes of 29 U.S.C. § 1802(7) and RCW
17 19.30.010 (2), and an employer for purposes of 29 U.S.C. § 203(d).

18 14. The Defendants recruited the Plaintiffs to work for them in
19 Mississippi, Idaho and Washington.

20 15. In December, 2008, Defendants recruited Plaintiffs for tree
21 planting work in Mississippi.

1 16. The Defendants utilized the services of farm labor contractors
2 Omar Angulo and MidStates Labor Solutions to recruit plaintiffs without
3 first determining that they were properly registered and authorized to engage
4 in farm labor contracting activities.

5
6 17. At the time of their recruitment by Defendants for work in
7 Mississippi, Plaintiffs were residing in Alabama.

8 18. The Defendants failed to disclose to plaintiffs in writing the
9 terms and conditions of the employment as required by the AWP and
10 FLCA.

11 19. Defendants represented to plaintiffs that they would file for
12 extensions of plaintiffs' H-2B temporary work visas for the term of their
13 employment with Defendants.

14 20. Plaintiffs each paid the sum of \$400 to farm labor contractor
15 Omar Angulo for this purpose.

16 21. Defendants' representation that they would obtain visa
17 extensions for plaintiffs was false and misleading, as Defendants did not
18 have the certification from the U.S. Department of Labor required to obtain
19 temporary work visas.

20 22. Defendants represented to plaintiffs at the time of recruitment
21 that they would be paid \$10.00 per hour for their work in Mississippi. This

1 representation was false and misleading, as they were paid a piece rate with
2 no minimum guaranteed hourly wage.

3 23. Based on Defendants' offer of employment, plaintiffs traveled
4 from Alabama to Mississippi in December, 2008.

5 24. Plaintiffs worked as employees of Defendants 5 Star Forestry
6 and Michael Dominguez in Mississippi from December 2008 until March of
7 2009.

8 25. The Defendants breached their working arrangement with the
9 Plaintiffs by not complying with the terms and conditions of employment
10 which they promised to the Plaintiffs.

11 26. The Plaintiffs suffered injury as a result of the Defendants'
12 breach of the working arrangement.

13 27. The wage statements provided to plaintiffs by Defendants in
14 Mississippi failed to state the number of hours worked, the number of trees
15 planted, the wage rate, or the reason for deductions taken from their wages.

16 28. The Defendants failed to pay wages when due when they
17 deducted money from the Plaintiffs' pay checks without authorization or
18 itemization of the purpose of the deductions.

19 29. During the course of their employment in Mississippi the
20 Plaintiffs were housed in housing provided or controlled by the Defendants.

1 30. Defendants failed to post at the housing sites occupied by
2 plaintiffs a statement showing the terms and conditions of occupancy.

3 31. Defendants had failed to disclose to plaintiffs the rent that they
4 would have to pay for housing.
5

6 32. The Defendants engaged in interstate commerce as defined by
7 the FLSA, 29 U.S.C. § 203(b).

8 33. The Plaintiffs worked overtime hours during the Plaintiffs'
9 employment with the Defendants.

10 34. The Defendants failed to pay the Plaintiffs overtime required by
11 the FLSA.
12

13 35. In or about March, 2009, the work in Mississippi ended, and
14 Defendants recruited Plaintiffs to perform forestry work for 5 Star Forestry
15 in Idaho and Washington State.

16 36. Defendants' recruitment of plaintiffs to perform forestry work
17 in Washington State constituted "farm labor contracting activity" within the
18 meaning of the Washington Farm Labor Contractor Act, RCW 19.30.010(3).
19

20 37. Defendants failed to furnish to plaintiffs at the time of
21 recruitment for work in Washington State, a written statement of the wages
22 to be paid, the conditions of any transportation, housing, or other
23

1 employment benefit to be provided, the terms and conditions of
2 employment, or other information required by FLCA at RCW 19.30.110(7).

3 38. Defendants 5 Star Forestry and Michael Dominguez employed
4 plaintiffs in both Idaho and Washington starting in or around April, 2009.

5 39. Defendants housed plaintiffs for a period of time in 2009 in
6 housing owned or controlled by Defendants in Eastern Washington. This
7 housing failed to meet applicable substantive health and safety standards.

8 40. Defendants' housing had not been licensed by the State
9 Department of Health for occupancy by migrant workers.

10 41. Defendants failed to post at the housing sites occupied by
11 plaintiffs a statement showing the terms and conditions of occupancy.

12 42. Defendants failed to post a certificate of compliance with
13 Federal and State health and safety standards at the housing, as required by
14 AWWPA.

15 43. Defendants continued to deduct sums from plaintiffs' wages
16 during their employment in Washington and Idaho without authorization or
17 itemizations, resulting in a failure to pay wages when due.

18 44. Defendants failed to pay plaintiff Julio Boyan Ayala for 6 hours
19 of work performed in Idaho in October, 2009.

1 45. Defendants failed to pay plaintiffs the wages and benefits that
2 they were owed under the Service Contract Act, 41 U.S.C. §§ 351 et seq. for
3 work that they did on forest service contracts.

4 46. Defendants failed to make, keep and preserve a record of the
5 following information:
6

7 (a) The number of hours worked by plaintiffs for work paid on
8 a piecework basis;

9 (b) The purpose of sums being withheld from plaintiffs' pay;
10 both in violation of RCW 19.30.110 (9) (a).

11 47. All of the actions and omissions alleged in the paragraphs
12 above were undertaken by the Defendants either directly or through their
13 agents.
14

15 IV. CAUSES OF ACTION

16 A. FAIR LABOR STANDARDS ACT

17 48. At all times relevant to this action, the Plaintiffs were employed
18 by the Defendants within the meaning of the FLSA.
19

20 49. The Defendants violated 29 U.S.C. § 201, et seq., by failing to
21 pay the Plaintiffs overtime for the weeks the Plaintiffs worked over forty
22 hours.
23

1 50. As a consequence of the Defendants' violation of their rights
2 under the FLSA, Plaintiffs are entitled to their unpaid overtime wages, plus
3 an additional equal amount in liquidated damages, and costs of court
4 pursuant to 29 U.S.C. § 216(b).

6 **B. MIGRANT AND SEASONAL AGRICULTURAL WORKER**
7 **PROTECTION ACT**

8 51. The Defendants intentionally violated the Plaintiffs' rights
9 under the AWPAA inter alia:

10 a. by failing to disclose in writing the terms and conditions
11 of employment at the time the Plaintiffs were recruited, in violation of 29
12 U.S.C. § 1821 (a);

13 b. by failing to post a written statement of the terms and
14 conditions of housing provided to the workers including any charges for
15 occupancy in violation of 29 U.S.C. § 1821(c);

16 c. by providing false and misleading information regarding
17 the terms and conditions of employment, in violation of 29 U.S.C. § 1821(f);

18 d. by failing to provide each employee with pay statements
19 that meet the requirements of 29 U.S.C. § 1821(d)(2);

20 e. by failing to pay the wages owed to each employee when
21 due, in violation of 29 U.S.C. § 1822(a);

1 f. by failing to comply with the terms of the working
2 arrangement, in violation of 29 U.S.C. § 1822(c);

3 g. by utilizing the services of farm labor contractor(s) who
4 were not properly registered and authorized to engage in such farm labor
5 contracting activities, in violation of 29 U.S.C. §§ 1811(b) and 1842;

6 h. by failing to ensure that housing owned or controlled by
7 Defendants complied with applicable substantive federal and state safety and
8 health standards, in violation of 29 U.S.C. § 1823(a)

9 i. by failing to certify that the Plaintiffs' housing met
10 minimum safety and health standards, in violation of 29 U.S.C. § 1823(b).

11 For each such violation of the AWP, the Plaintiffs are entitled to
12 recover their actual damages or up to \$500 per violation in statutory
13 damages. 29 U.S.C. § 1854.

14 **C. WASHINGTON STATE FARM LABOR CONTRACTOR**
15 **ACT**

16 52. Defendants violated the Washington Farm Labor Contractor
17 Act, RCW 19.30.010 *et seq.*, by the following:

18 a. Failing to provide to plaintiffs at any time, including the time
19 of hiring, recruiting, or soliciting, any written statement in English or
20 Spanish describing the compensation to be paid, the conditions of any
21

1 transportation, housing, board, health or day care services or any other
2 employee benefit to be provided by the farm labor contractor or by his or her
3 agents, and the costs to be charged for each of them, or any other
4 information regarding the terms and conditions of employment, in violation
5 of RCW 19.30.110 (7);
6

7 b. Failing to furnish plaintiffs with pay statements itemizing
8 the total payment and the amount and purpose of each deduction there from,
9 hours worked, and other information required by RCW 19.30.110 (8).

10 c. Failing to make, keep and preserve a record of the
11 information required by RCW 19.30.110 (9);
12

13 d. Failing to pay wages when due pursuant to RCW
14 19.30.110 (4) and (5).

15 **V. PRAYER FOR RELIEF**
16

17 53. Wherefore, the Plaintiffs respectfully request that the Court
18 grant them the following relief:

19 a. Enter a declaratory judgment that the Defendants violated the
20 Plaintiffs' rights under the FLSA, the AWPB and the FLCA, as set forth in
21 the preceding paragraphs.
22
23

1 b. Award the Plaintiffs actual damages, or alternatively, statutory
2 damages for each of the Defendants' violations of the AWP;A;

3 c. Award the Plaintiffs actual damages, or alternatively, statutory
4 damages of \$500 for each of the Defendants' violations of the FLCA;

5
6 d. Enter a finding that plaintiffs are entitled to satisfy any
7 judgment awarded them out of the security held by the Department of Labor
8 and Industries pursuant to the Farm Labor Contractor Act.

9 d. Award the Plaintiffs their overtime wages plus liquidated
10 damages in an equal amount;

11 e. Award the Plaintiffs their costs and reasonable attorneys fees
12 pursuant to 29 U.S.C. § 216(b) and RCW 19.30.170(1);


13 f. Award the Plaintiffs prejudgment and post-judgment interest;

14 g. Award Plaintiffs such other relief as the court may deem just
15 and equitable.
16

17 SIGNED this 19th day of October, 2010.

18 Respectfully submitted,

19 NORTHWEST JUSTICE PROJECT

20
21 

22 Michèle Besso, WSBA # 17423
23 Attorneys for Plaintiffs